

Canada Border
Services Agency

Agence des services
frontaliers du Canada



APPENDIX A - Managers' Guide to Conducting Internal Investigations

Internal Affairs Section
Corporate Security and
Internal Affairs Division
Comptrollership Branch

March 13, 2007

PROTECTION • SERVICE • INTEGRITY

Canada

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1. FOREWORD

Canada Border Services Agency (CBSA) managers are responsible for managing CBSA programs and services in a manner consistent with public expectations regarding public funds and resources. CBSA employees must comply with the legislation and regulations administered by the CBSA, the CBSA Code of Conduct, as well as approved procedures. Management and employees have a role in the protection of public resources and funds from employee misconduct or abuse. When an incident involving an employee or allegations of misconduct are brought to management's attention, each incident must be thoroughly investigated by Internal Affairs (IA) or by local management after discussion with IA. Because incidents often affect more than one area of responsibility, a co-ordinated effort between management and IA is vital. It is in keeping with this spirit of cooperation that this guide was developed.

2. OBJECTIVE

This guide provides functional guidance to all levels of management with respect to the reporting of alleged or suspected employee misconduct to Internal Affairs; it also provides direction to managers on how to conduct fair and thorough internal investigations.

3. RESPONSIBILITIES

Directors are responsible for promptly reporting to the Manager, Internal Affairs, all allegations of employee misconduct or incidents without fail. Items to be reported are as specified in the **CBSA Security Manual, Security Volume, Chapter 27 - Internal investigations into alleged or suspected employee misconduct or any other incident which could effect the public trust in the CBSA or its working relationship with other law enforcement partners**. When apprised of an allegation of employee misconduct, the Director or his delegate will conduct a preliminary inquiry by gathering information to determine whether based upon the balance of probabilities the allegation is founded or not. If there is sufficient evidence to presume that the allegation is founded, the Director will report the matter to the Manager, Internal Affairs without delay. Following consultation the Manager, Internal Affairs will determine whether the matter would best be investigated locally or whether Internal Affairs will investigate the matter. In requesting an investigation, Directors must clearly state the purpose of any investigation and shall provide a written request, to IA accompanied by the report of the preliminary inquiry. When it has been agreed that local management is to conduct the investigation, Directors shall provide IA with a copy of the investigation report and of its conclusions. The fact that an investigation is being conducted by others, for example, a police force, an auditor, or Investigations Division, or that criminal or civil proceedings have been instituted in no way diminishes or negates the Director's responsibility to examine any workplace-related issue and take appropriate action.

Managers are required to report to their Director any allegation of employee misconduct. When a Director delegates the responsibility of a preliminary inquiry to a manager, he or she must attempt to confirm the facts pertaining to the offence, determine the potential scope of the offence, identify all parties involved, including witnesses, obtain, review, examine, and analyse related documents, and report findings to the Director. Care must be exercised to ensure that parties involved in a potential incident are not made aware that the incident is under review.

Employees must comply with all laws and regulations administered by the CBSA, as well as the approved rules and procedures, and abide by its Code of Conduct, thereby maintaining CBSA's integrity and that of its employees. Employees must promptly report, either orally or in writing, any allegation or suspicion of misconduct by another employee to their immediate supervisor, to one of the line supervisors, or, if the

circumstances warrant it, to their Director. Furthermore, employees have an obligation to attend the interview, as well as to cooperate and assist in the conduct of an investigation into an incident or allegation of employee misconduct. This includes affording complete access to the CBSA information systems, documents, and records, to the extent that such access is legally permitted.

Investigators are responsible for having a clear understanding of the mandate and purpose of the investigation, obtaining all relevant preliminary information relating to the incident or allegation, identifying written sources of information and the individuals who can supplement or corroborate the available information, planning the investigation, meeting with witnesses and gathering evidence, informing the respondent that an investigation is being conducted, interviewing the respondent, and writing a clear and comprehensive report that will allow management to make an informed decision in the matter.

The **Internal Affairs Section** is responsible for providing qualified investigators to conduct investigations, advising local management on the conduct of the preliminary inquiry, and following investigations conducted by local management.

4. DEFINITIONS

Complaint: A formal allegation of employee misconduct made to or by a CBSA manager.

Complainant: A person making an allegation of employee misconduct.

Fraud: An act whereby an employee obtains a material advantage by unfair or wrongful means.

- **Incident (examples)** Allegations of misconduct made by a member of the public or by an employee against an employee;
- Alleged or suspected employee misconduct with respect to violations of criminal laws or other laws, rules, and regulations administered by the CBSA;
- Breach of trust;
- Conflict of interest;
- Contravention of the CBSA's *Electronic Networks Policy*;
- Destruction of documents in contravention of section 67 of the *Access to Information Act*.
- Fraudulent claims regarding travel expenses, overtime and leave, including falsification of official documents, records, and medical certificates;
- Fraudulent use of the CBSA systems, such as ICES, FOSS or CPIC,
- Reduce the amount owed by a traveller, or to increase the amount of refunds or credits paid under a benefit program, to which the client is not entitled;
- Loss, theft or destruction of revenue, money, seized or abandoned goods, CBSA assets, or sensitive information;
- Participation in smuggling activities;
- Affiliation with Criminal organizations;
- Unauthorised access to and/or disclosure of confidential CBSA information.

Investigator: A duly appointed person who investigates allegations or incidents involving one or more employee.

Investigation: A systematic and thorough process involving the examination of circumstances surrounding an incident or allegation, the purpose of which is to establish and document all the relevant facts, and to analyse these in order to allow management to make an informed decision.

Misconduct: Any action whereby an employee wilfully contravenes an act, a regulation, a rule, a CBSA policy, an approved procedure, or the CBSA Code of Conduct Or participated in an activity which brings the CBSA into disrepute or effects the CBSA's interrelationship with other law enforcement organizations

Preliminary inquiry: The act of obtaining all details relating to the facts and circumstances of a reported incident, examining the documentation available in order to determine whether an allegation is substantiated, and establishing the scope of an investigation.

Respondent: An employee against whom an allegation of misconduct has been made.

Witness: An individual other than the respondent being interviewed for the purpose of obtaining information, that includes documentation, relating to a case.

5. GENERAL

A determination between the Manager, Internal Affairs and a Director, or a delegated manager, shall be made as to who will conduct the investigation into the incident, in light of the nature and seriousness of the incident. Incidents such as the theft of revenue, money, seized, detained, or abandoned goods, or CBSA assets or fraud, where it is suspected that an employee is responsible, are normally investigated by IA.

In agreement with the Manager, Internal Affairs, local management may conduct the investigation into employee misconduct; however, Internal Affairs will provide advice, follow the investigation, and receive a copy of the investigation report.

6. IMPORTANCE OF ACTING PROMPTLY

Aside from the responsibility to provide for the protection and safety of employees and to safeguard public resources, managers are also responsible for dealing effectively with allegations of employee misconduct. It is crucial that management act promptly and when informed of an incident or allegations involving an employee.

Prompt action on the part of management reduces the risk or possibility of: additional loss of public assets and/or funds; destruction of documents; and loss of confidence in accountability and the public trust. It sends a clear message to all employees that management takes allegations of misconduct involving its employees seriously; it demonstrates management's commitment to fulfilling its responsibilities and allows it to improve policies and procedures, identify training requirements, and reinforce the CBSA's commitment to making employees accountable.

7. PRINCIPLES

An investigation is a means of establishing factual and documented findings on the basis of which an informed management decision can be made. Every investigation is conducted in a rigorous and professional manner.

However, the scope of investigations may vary according to the seriousness of the incident and the supporting evidence. The investigation will determine whether there is a need for policy or procedural changes, training, or disciplinary action. The investigator may contact the police if the findings reveal that the *Criminal Code of Canada* was contravened. Furthermore, delegated authority or security clearances may be suspended during an investigation, or revoked indefinitely the result of an investigation and this may negatively affect the current or future employment status of an individual within the federal government.

Investigations must be objective, thorough, and conducted by a qualified person who is aware of the rights of those involved. The events and circumstances relating to an incident, both positive and negative, must be recorded and reported accurately. Investigations are to be conducted in a timely and efficient manner. These principles are vital in order to maintain the trust of employees, their representatives, management, and the public.

8. TYPES OF INVESTIGATIONS

There are usually three basic types of investigations: a preliminary inquiry, an administrative investigation, and a criminal investigation, which is normally conducted by the police agency having jurisdiction.

8.1 Preliminary inquiry

The purpose of a preliminary inquiry is to determine whether there is sufficient evidence to support the allegations made and to make a preliminary determination of the scope of the alleged offence. In short, the preliminary inquiry involves obtaining from the individual who make the allegations as many details as possible regarding the facts and circumstances reported and to examine the documentation as thoroughly as possible. The steps in a preliminary inquiry will vary according to the type of allegation made. Steps may include such activities as reviewing an Audit Trail Search report, phone records, travel expense claims, overtime and leave forms, as well as identifying all possible parties involved and all possible witnesses. Documents must be analysed in order to make a *prima facie* determination as to whether the allegation is founded. Discretion and tact are required throughout the preliminary inquiry in order to minimise stress for those involved and for other staff. It is important that documents be safeguarded in the event that an administrative or criminal investigation is warranted.

If a preliminary inquiry supports the allegation, all attempts at gathering information should be stopped immediately, and the matter should be referred to Internal Affairs. IA will then decide, with local management, if an investigation is warranted and who should conduct it.

The decision to meet with the respondent immediately after the preliminary inquiry is matter of judgement and should be discussed with IA. In some cases, allegations are the subject of criminal investigations and any disclosure of information to the respondent could compromise this investigation as well as the administrative investigation.

8.2 Administrative investigation

A preliminary inquiry may determine that the allegations raised may have some basis in fact, that the misconduct is of a serious nature, that several witnesses must be interviewed, that the allegations are of a very sensitive nature or could tarnish the CBSA's credibility in the eyes of the public. In such cases, the Director may decide that an administrative investigation is warranted

and will discuss the case with Internal Affairs to determine who will conduct the investigation. If the investigation concludes that there was no employee misconduct, the respondent is to be informed accordingly in a timely fashion. If an allegation of misconduct is substantiated, management is responsible for taking the appropriate disciplinary measures.

8.3 Criminal investigation

In accordance with Treasury Board Policy, if the administrative investigation reveals that a CBSA employee has committed fraud, or any other offence or illegal act against the Crown, the matter must be referred to the police agency having jurisdiction that will determine whether the case warrants a criminal investigation. Criminal proceedings are the exclusive responsibility of authorised law-enforcement agencies. When a case is referred to the police, IA is responsible for monitoring the investigation and ensuring CBSA's interests are adequately protected.

If the CBSA Investigations Division conducts an investigation in respect of an employee suspected of violating the *Customs Act*, or the *Excise Tax Act*, management and IA are to be informed of the results of its investigation in order to determine whether an administrative investigation is warranted.

9. PRIVACY/ACCESS TO INFORMATION REQUESTS

Any Canadian citizen or permanent resident including the news media may make requests for release of information. Anyone involved in a preliminary inquiry or an investigation may obtain access to the investigation file and report under the *Access to Information Act* or the *Privacy Act*. However, requesters will only receive information to which they are entitled. Furthermore, when an administrative investigation is being conducted, only information that will not hinder the ongoing investigation will be released.

Personal information collected during an investigation may only be used for the purpose of which it is collected or for a purpose set out in the *Privacy Act*. Personal information contained in investigation files cannot, without the individual's consent, be used or disclosed except in accordance with Subsection 8 (2) of the *Privacy Act*.

The investigator must be made aware that all documentation (including tape recordings, hand-written and interview notes, documentary evidence) is subject to the *Access to Information Act* and the *Privacy Act* and that he or she is responsible for ensuring their availability should they be requested under the aforementioned legislation.

10. RETENTION OF INFORMATION

The investigator must file and retain in a secure location all files, documents, written notes, recordings, evidence, and supporting documents used during an investigation. From a legal standpoint, it is important that strict control be maintained over the storage of, and access to, this information. The items and documents gathered by the investigator to establish the facts of a case must be stored and handled in such a way as to prevent damage and to ensure that they are properly identified and can serve to subsequently prove the chain of evidence custody as required by the legislation. The date, time, and origin must be indicated on exhibits. In most cases, exhibits serve to corroborate the testimony of witnesses. The investigator must remember that the exhibits are also subject to the *Privacy Act* or the *Access to Information Act*.

Document originals must be obtained. All copies of originals will have to be certified by the investigator. Documentation gathered for an investigation must be retained in accordance with the CBSAs Disposal and Retention Schedule. The documentation must be kept for at least five years after the case is actually closed or after the date of the last document placed on the file.

11. CONDUCTING AN INVESTIGATION

It is important that all activities relating to an investigation be carried out with tact and discretion. It is equally important that employees be treated with dignity and respect and be treated fairly by the investigator. Among other things, the investigator must provide the respondent with the opportunity to respond to the allegations and to defend him or herself. The following is a suggested methodology for conducting an investigation.

11.1 Purpose of investigation

To collect all facts and evidence relating to an allegation or an incident. It is essential that the allegations be clearly and completely stated. The purpose is not to merely "*explain away*" an incident but to supply management with the information required to determine what corrective measures, if any, are to be taken. (*Administrative or disciplinary*)

11.2 Planning the investigation

Based on the stated allegations, before starting interviews, the investigator must determine what must be done in order to obtain the information that will enable him or her to fully understand the circumstances and be able to report to management (*Who, What, Where, When, Why and How*). The investigator should obtain all relevant information and documentation from the resource person, usually the person who conducted the preliminary inquiry. When planning the investigation, the investigator must determine what information is missing and where it can be obtained, and identify the individuals who can supplement this information or corroborate the information available and the relevant facts. Such individuals could include supervisors who have met with the respondent to explain the directives to follow or the code of conduct by which to abide.

The investigator must define the steps to follow for the investigation, prepare the questions to be asked during interviews, estimate the time required for each interview, and carefully determine the order in which the interviews will take place. All persons who may have relevant testimony to give must be interviewed. When it is impossible to interview someone, the investigator must note in his or her investigation report the steps taken to interview this person and the reasons why it was impossible to do so. Normally, the complainant is the first to be interviewed and the respondent is the last.

Customarily, the investigator contacts each witness the day before the interview to inform him or her of the reason for the interview, the time and place of the interview, and that her or she may be accompanied by an observer, providing the chosen observer will not be interviewed in the course of that same investigation. Witnesses should be asked to bring with them any documentary evidence they have in their possession that relates to the investigation. In exceptional circumstances individuals to be interviewed will not be contacted the day prior if to do so would negatively impact either employee safety or the investigation in question.

When planning the investigation, the investigator should therefore allow time for unforeseen delays or unplanned interviews. When such unforeseen interviews are required, it is not always possible to inform the witness one day ahead. However as much time as possible should be given in order for the witness to gather any relevant information and, if desired, obtain the services of an observer.

11.3 Location of interviews

The best location is the one where interruptions and distractions are fewest and the atmosphere encourages conversation. Whenever possible, a discreet office within a CBSA office should be used. Investigators must follow basic courtesies and show appropriate respect for the environment when interviewing a witness at his or her residence.

Members of the general public should not be interviewed at work when they do not find this appropriate. Such witnesses should be interviewed in a neutral location.

11.4 Third party presence

Any person being interviewed may, if so desired, be accompanied during the interview by a person of his/her choice as long as this person is not or will not be a witness in the investigation. Allowing the presence of an observer is a privilege and should not be considered a right. The third party present during the interview is not allowed to interfere in any way with the interview process; the third party's role is limited to that of an observer.

11.5 Administrative caution

At the beginning of the interview, the investigator will remind the person to be interviewed, when the latter is not accompanied by anyone, that an observer can accompany him or her. If someone accompanies the person interviewed, the investigator will confirm that the observer is present at the request of the person to be interviewed.

All persons interviewed are to be informed:

- Of the reason for the interview;
- Of the mandate that was given to the investigator;
- That notes will be taken during the interview;
- That the person interviewed will be asked to review the investigator's notes for accuracy and, if required, corrections will be made when clarification is required;
- That the person interviewed will be asked to sign the last page and initial the others;
- That the information provided during the course of the interview may be included in the investigation report to be forwarded to the appropriate Vice President and a copy thereof to be forwarded to the Director responsible for the office where the respondent works, and may be used in a disciplinary hearing should one result;
- That the information provided during the interview will be accessible to those who are entitled to receive it under the *Access to Information Act* and the *Privacy Act* and who request it;
- That they will be asked to sign a form confirming they understand the above.

The investigator must ensure that the person being interviewed clearly understands the purpose of the meeting. The investigator will also have to answer all questions relating to the procedure to be followed.

11.6 Confidentiality

No assurances can be given to witnesses that their name and the information they provide will not be revealed to others, as CBSA administrative investigations are subject to the *Privacy Act*. Witnesses must be informed that investigators cannot conceal relevant information, including the sources that give credibility to the evidence gathered.

Personal information learned during an investigation, which does not relate to the investigation must be discarded and never discussed with anyone during or following the investigation. The investigator must treat all witnesses; including those he or she knows well, in a professional, impartial, and impersonal manner.

11.7 Documenting interviews

The questions must be open so that the person being interviewed can give his or her version of the facts. More specific questions may also be asked in order to clarify the testimony. When the person being interviewed uses expressions such as «I believe that» or «that may be the case,» the investigator will have to clarify such statements, in order to ensure that what is being provided as fact and not impressions. The investigator should not provide his or her questions ahead of time, as they should only serve as a guide and can be changed during the interview. As needed, the investigator will have to confront the witness or the respondent with documents or other testimony previously obtained, without being threatening or intimidating. The investigator will therefore have to have the relevant documents with him or her and be ready to use them.

The investigator will take notes during the interview. It is not necessary to write down a word-for-word account, but the notes will have to accurately reflect the testimony given by those interviewed. These notes may be the only means by which the interview will be documented. Consequently, they must be dated, complete, legible, and understandable, and be placed in the investigation file.

Should the person interviewed request permission to record the interview; it is recommended that the interviewer also arrange to record the interview, while at the same time making notes of questions asked and answers provided.

The individuals interviewed will have to read the notes and attest that they constitute an accurate account of the interview. They will sign and date the document, indicating that the notes constitute a complete record of the interview. If someone refuses to sign the document, the investigator will have to sign at the end of the notes to attest that the said individual had the opportunity to review the notes and that this person was asked to sign the document but that he or she refused to comply. When requested, a copy of the signed interview notes will be forwarded to the person interviewed once the investigation is completed.

Whenever a person being interviewed provides statements pertaining to a third party, such comments will not form part of the investigation nor will they be included in the investigation

report unless the third party in question has been afforded the opportunity to provide his or her response to such statements. Similarly, the report is not to reflect any comment or reference to a person or a document unless such reference is duly documented on the investigation file.

When information is obtained during a telephone conversation, the investigator must clearly note the date and time of the interview, as well as the name, title, address, and telephone number of the person interviewed. After the conversation, the investigator will read the account of the telephone conversation in order to confirm its accuracy and will then sign the pages of notes.

11.8 Information obtained from a third party

When a person being interviewed provides information obtained from a third party, such information cannot be included in the report unless the investigator can identify the third party and interview the person who is the subject of the said comments.

11.9 Refusal to cooperate

During an investigation, should an employee refuse to be interviewed or provide the information required in the investigation, the employee in question should be informed of his or her obligation to cooperate and that a refusal could result in disciplinary action by management. The investigator shall inform the employee that the relevant CBSA manager will also be informed of the refusal to cooperate and that the refusal to cooperate will be noted in the investigation report.

During the interview, the respondent may be reluctant to discuss a situation or relate the facts thereof if he or she feels that doing so may incriminate him or her. While informing the respondent that he or she is not obliged to answer the questions, the investigator must explain that, in such cases, management will nevertheless have to render a decision without the benefit of the respondent's version.

11.10 Report

The investigation report is a narrative that provides those who «need to know» or who «have a right to know» with all the information required to make a final determination. The report shall be presented in a logical, clear, and concise manner that excludes personal opinions, editorial comments, and irrelevant information. However, the investigation report must include all relevant facts, including circumstantial factors that will allow management to clearly understand all aspects of the case. **The report must be presented in the following format:**

Background: Brief summary of the events that gave rise to the investigation.

Example: On (date), XX (name and title) met with XX (name, title, office)/spoke to XX (name, title, office) on the phone and alleged that (name, title, and office of respondent) had... A preliminary inquiry conducted by (name, title, office) has determined that... In light of the foregoing, the director (name and title) has asked XX (name and title) or the Internal Affairs Division to conduct an investigation.

Purpose of the investigation: Specify what the investigation will attempt to demonstrate.

Example: Ascertain the accuracy of the allegation that... or: Determine the circumstances surrounding (description of event).

Persons interviewed: Alphabetical list of names (title and office, or home address for members of the public) of the persons interviewed.

Investigation: Testimony and evidence gathered presented in the *chronological* order in which they were obtained.

Example: When interviewed on (date) in the presence of (name of observer), XX (name, title, and office of the person interviewed) stated that:

- He/she saw...
- He/she observed that...
- One paragraph on each main point raised.

Summary: Juxtaposition of facts, testimony, and evidence, with a view to identifying flaws or weaknesses, crucial points, gaps in logic, and contradictions. All relevant information should be analysed and, as required, specific references to the documents included in the investigation file will be quoted. The ideal analysis of the facts and evidence in an investigative report should bring the reader to the same logical conclusion as that reached by the investigator.

Observation: (as required) Description of non-compliance with guidelines (state which ones); identification of shortcomings in procedures; the need to review, adjust, or develop a policy, directive, etc., mostly those national in scope.

Conclusion: Brief statement directly related to the «purpose of the investigation». It is crucial that there be a conclusion for each allegation or each incident stated in the purpose.

Example: Through the information obtained during the investigation, it was demonstrated that the allegation to the effect that (name, title) is believed to have (repeat allegation) was founded (or unfounded);

12. EXTERNAL RESOURCES

Document Examiner

An investigator who requires the services of an expert to examine documents, samples of handwriting, etc., may refer such documents to the CBSA Laboratory. Similarly, evidence gathered may be submitted to the RCMP's forensic laboratories or to the fingerprint lab for analysis and an opinion.

It is crucial that the investigator ensure that the expert witness is well acquainted with the relevant facts. Any opinion provided by an expert rests on facts, which the said expert presumes to be true. One should never draw any conclusions on the meaning of evidence until all the facts have been analysed. False premises can lead to flawed conclusions.

Such expert analysis and the resulting conclusions will be included in the investigation report, and the analysis portion of the investigation report will reflect the importance and relevance of the conclusion of such forensic analysis to the investigation and, if appropriate, will be cited in the conclusion.

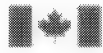
13. REFERENCES

- *Access to Information Act*
- *Canadian Human Rights Act*
- *CBSA Code of Conduct*
- *Criminal Code*
- *Discipline Policy and Discipline Policy Guidelines*
- *Electronic Networks Policy Guidelines*
- *CBSA Security Manual*
- *Privacy Act*
- *Treasury Board Financial Management Manual, Chapter 4-7: Policy on losses of money and offences and other illegal acts against the Crown.*

ENQUIRIES

Should you require further information, please contact the:

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Canada Border
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Professional Standards Management Framework



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PROTECTION • SERVICE • INTEGRITY

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PROFESSIONAL STANDARDS MANAGEMENT FRAMEWORK PLACEMAT

DEFINITION

- CBSA Core Values
- Professional Integrity Statement
- CBSA *Code of Conduct*
- Legislation

AWARENESS – PROMOTION - COMMUNICATION

- The Professional Integrity Program (PIP)
- Professional Integrity on the CBSA Atlas Site
- CBSA Security Policy Instruments
- Training and Awareness
- Security Briefings
- CBSA Security Program Management Framework (SPMF)
- Internal Security and Professional Standards Collaboration and Liaison
- National Security and Professional Standards Collaboration and Liaison
- International Integrity Collaboration and Liaison

MONITORING & OVERSIGHT

- Management of Allegations of Misconduct and the Departmental Security Officer (DSO)
- CBSA Personnel Security Review Committee
- Security Intelligence Review Committee

EVALUATION & REPORTING

- Evaluation
- Risk Profile and Risk Response Strategies
- Internal Reports
- Surveys
- Audits
- Other Government of Canada oversight functions

ENFORCEMENT

- CBSA Discipline Policy and Guidelines
- Management of Allegations of Misconduct and the Departmental Security Officer (DSO)

PROTECTION • SERVICE • INTEGRITY

1. **Effective Date**

This Canada Border Services Agency (CBSA) Professional Standards Management Framework is effective as of *month/day/year*.

2. **Authority**

Coupled together, the following guiding instruments set the minimum expected standards of professional conduct for all CBSA employees:

- The Values and Ethics Code for the Public Sector;
- The CBSA Code of Conduct; and
- The Policy on Conflict of Interest and Post-Employment.

3. **Introduction**

The CBSA's *Code of Conduct*, Motto, Heraldic Badge and Charter highlight the importance of the integrity of its employees. The Motto states that as employees of the Agency we “are respectful and honest in our relationships with each other, our stakeholders and the general public. We deliver services that balance our protection and facilitation roles and exercise our authority in a principled, open and fair manner. We accept responsibility for our actions in order to build and maintain a reputation of trustworthiness and accountability.”¹ While program integrity remains the responsibility of each program lead, the CBSA aims to advance a culture of professional integrity amongst its employees.

All CBSA employees must comply with all Canadian laws, Treasury Board Secretariat (TBS) policies and procedures, including the Values and Ethics Code for the Public Sector, and CBSA policies and procedures, including the CBSA Code of Conduct.

In accordance with the TBS Policy on Government Security, the CBSA must ensure that information, assets and services are safeguarded from compromise. All employees play an important role in ensuring that the CBSA fulfills each of these fundamental obligations.

Any allegation or suspicion of the breach of any of these obligations by an employee must be promptly reported and thoroughly reviewed. Prompt action is essential to, among other things:

- Stop the misconduct;
- Protect information, assets and resources from further compromise;
- Preserve and secure relevant evidence; and
- Uphold the professional reputation and image of the CBSA.

4. **Definition**

At the CBSA, professional integrity and professional standards are defined through instruments that establish standards of conduct for dealing with external / internal stakeholders, and describe what acting with integrity means.

¹ Source: CBSA Code of Conduct - http://atlas/hrb-dgrh/pol/sr-rt/code/cc_eng.asp

CBSA Core Values

Respect - We serve the public interest through the non-partisan support of our Minister. We show the utmost appreciation for the dignity, diversity and worth of all people and uphold the *Canadian Charter of Rights and Freedoms*. We develop and sustain mutual trust with our colleagues.

Integrity - We exercise our authority in an honest, open and fair manner. We accept responsibility for our actions in order to build and maintain a reputation of trustworthiness and accountability.

Professionalism - Excellence in the design and delivery of public sector policy, programs and services is beneficial to every aspect of Canadian public life. Engagement, collaboration, effective teamwork and professional development are all essential to a high-performing organization.

Professional Integrity Statement

For the CBSA, professional integrity means that its employees are responsible for:

- Exercising their authority in an honest, open and fair manner;
- Accepting responsibility for their actions in order to build and maintain a reputation of trustworthiness and accountability;
- Treating others in a respectful manner;
- Doing what is right even when nobody is looking; and
- Safeguarding the physical and informational assets of the CBSA.

CBSA Code of Conduct

The CBSA Code of Conduct aims to support and promote a working culture of values and ethics, as well as to provide clarity regarding the responsibilities and expected standards of conduct as public servants as well as CBSA employees.

This CBSA *Code of Conduct* fulfills the requirement of section 6 of the Public Servants Disclosure Protection Act (PSDPA) and should be read along with the Values and Ethics Code for the Public Sector and the Policy on Conflict of Interest and Post-Employment. Collectively, the two Codes and the Policy are binding on all CBSA employees and new recruits.

Legislation

There are a variety of policies and acts that the CBSA must adhere to and/or administer on behalf of the Government of Canada.

- **TBS Policy on Government Security (PGS)**

The Policy on Government Security ensures that deputy heads effectively manage security activities within departments and contribute to effective government-wide security management including activities related to Professional Standards.

- **Other Legislation**

See Annex 1 for examples of Acts administered by the CBSA.

5. **Awareness/Promotion/Communication**

At the CBSA, professional integrity and professional standards are communicated and promoted through awareness-oriented instruments that show us how to act with professional integrity.

The CBSA strives to maintain a culture of professional integrity amongst its employees. The Security and Professional Standards Directorate (SPSD) ensures that all staff receives the appropriate training and resource materials to promote the highest level of security and professional integrity awareness. This will help to protect both employees, as well as the physical and informational assets of the Agency.

The Professional Integrity Program (PIP)

The Professional Integrity Program is located in the Security and Professional Integrity Programs Division, Security and Professional Standards Directorate, Comptrollership Branch.

The professional integrity of CBSA employees is essential to the CBSA's role in protecting the safety and security of Canadians and the unique authority that CBSA employees have in moving people and goods across the border.

While the vast majority of CBSA employees demonstrate the highest level of professional integrity and perform their duties with honour and distinction, isolated acts of misconduct do occur.

Through the new PIP, we will work together with CBSA employees to uphold the Agency's exemplary standards of integrity and professionalism with the goal of preventing occurrences of misconduct.

The Professional Integrity Program:

- Raises awareness of professional integrity across the CBSA;
- Clearly communicates and reinforces the expected standards of professional integrity both on- and off-duty to all employees;
- Ensures that employees know how to identify and respond to threats to professional integrity and are willing to engage in the response processes; and
- Conducts oversight activities to ensure that professional integrity risks are identified; reported, continually monitored and mitigated where necessary.

Professional Integrity on the CBSA Atlas Site

The [Professional Integrity](#) on the CBSA Atlas Site provides important information about professional integrity within the CBSA, including the related responsibilities for employees. It also defines misconduct and provides information related to:

- [The Most Frequent Types of Misconduct;](#)
- [Detecting Misconduct;](#)
- [How to Avoid Misconduct;](#)
- [How to get help;](#)
- [Employee's Obligation to Report Misconduct;](#)
- [Self-Disclosure.](#)

CBSA Security Policy Instruments - Comptrollership Manual, Security Volume

The Security Volume comprises the full suite of policies, directives, and procedures for all areas of security at the CBSA. This Volume applies to all CBSA Branches at Headquarters (HQ) and the Regions, all CBSA employees (permanent, term, casual, and part-time), contract and private agency personnel, and to individuals seconded or assigned to the CBSA, including students. The following are a few examples of the Security Policy Instruments that are available on Atlas:

- **Directive on CBSA Personnel Security Screening**
Standard for CBSA Personnel Security Screening
- **Policy on Abuse, Threats, Stalking, Assault Against Employee**
Guidelines for Abuse, Threats, Stalking and Assaults against Employees
- **Policy on Internal Investigations into Alleged or Suspected Employee Misconduct (PDF, 334 KB)**
Appendix A – Managers' Guide to Conducting Internal Investigations (PDF, 570 KB)

Training and Awareness

- **Professional Integrity Awareness** (facilitator-led): These awareness sessions are designed to clearly communicate and reinforce the expected standards of professional conduct for all employees both on- and off-duty and to ensure that employees know how to detect, report, avoid and mitigate situations involving misconduct. The awareness session is mandatory for all new CBSA recruits as part of the Officer Induction Training Program.
- **Ethical Leadership & Professional Integrity Awareness** (online) – This product was developed by the Office of Values and Ethics (OVE), Human Resources Branch and the SPSPD. While each team has distinctive roles within the Agency, they have come together to deliver this product because the work of both teams is driven by common guiding instruments and values. In addition to the objectives of the facilitator-led Professional Integrity Awareness, this product aims to: ensure that employees know that they are expected to integrate the public sector and the CBSA values in all their decisions, actions and how they treat others; and reinforce that all employees are ethical leaders and to provide resources so they know how to make an ethical decision.
- **Online Security Awareness Module (OSAM)** (online): The OSAM is mandatory for employees at all levels and is designed to enhance knowledge of security and assist in the promotion of a security-conscious culture within the CBSA.
- **Online Security Awareness Module for Managers (OSAMM)**: The OSAMM is mandatory for all Agency managers and supervisors at all levels, whether substantive or acting in excess of 4 months. It is designed to brief managers on the key aspects of security and to provide the information managers need to help their teams effectively protect CBSA employees, information and assets.
- **Use of Social Media at the CBSA** (online): This training allows learners to recognize standards of behavior and accountability for accessing and using Web 2.0 and social media tools, services, applications, content and networks. This training introduces the learners to social media and covers social media usage at the CBSA, as well as, the implications of using social media in a professional setting.
- **Insider Threat Briefings** (facilitator-led and online): These briefing sessions focus mainly on espionage, understanding the characteristics of spies, mitigation strategies and reporting requirements. In keeping with a Canada-wide safeguarding initiative, the CBSA has made it mandatory for all employees who possess a Top Secret clearance to receive this facilitator-led security briefing.²
- **Professional Standards Investigation (PSI) Documents and Templates**: The following PSI tools are available on the Professional Standards Investigations Section of the CBSA WIKI:
 - Introduction to Investigation-Revised 2015 (2).doc

² The on-line product is currently under development and scheduled for full implementation prior to March 31, 2016.

- [PSI Notice of Investigation - DG v2.docx](#)
 - [PSI Notice to Respondent.doc](#)
 - [PSI Notice to WITNESS.DOC](#)
 - [CBSA Reporting of Employee Misconduct](#)
- **Manager's Essentials for the CBSA (H4051-N).** The Manager's Essentials course is delivered by the Training and Development Directorate and is mandatory for all CBSA managers. The course includes a training component on Security.
 - **Values, Ethics and Disclosure of Wrongdoing at CBSA (H7031-P)** The H7031-P course has been developed by the Human Resources Branch and is delivered on-line. The objective of the training is to:
 - Increase employee knowledge of the official values and ethics documents that form a part of their terms and conditions of employment;
 - Raise values and ethics awareness in the workplace and off-duty, and recognize issues related to values and ethics;
 - Develop ethical leadership competencies;
 - Develop employee's capacity to recognize impediments to ethical decision-making and to know when to seek assistance; and
 - Provide tools and resources to help employees meet their obligations and responsibilities.
 - **Public Servants Disclosure Protection Act (F4042-N)** The F4042-N course has been developed by the Human Resources Branch and is delivered on-line. This course is designed to provide supervisors, managers and executives with knowledge of the Public Servants Disclosure Protection Act (PSDPA) to enable them to identify wrongdoing as defined by the PSDPA and to examine their role in the disclosure of information concerning wrongdoing.

Security Briefings

Mandatory [security briefings](#) are provided to employees and external service providers upon employment. These briefings highlight their responsibilities regarding safeguarding sensitive information (Classified/Protected) and valuable assets.

CBSA Security Program Management Framework (SPMF)

The **SPMF** provides strategic guidance and direction on the design, development and implementation of the CBSA Security Program and its sub-programs. It establishes the required governance parameters as defined by legislation and policy. It details all CBSA Security Program related accountabilities, roles and responsibilities, as well as the direction in which security management and governance is structured Agency-wide.

Internal Security and Professional Standards Collaboration and Liaison

- **Professional Standards Briefings to the President**

On a monthly basis, the DSO and the DG Labour Relations meet with the President to brief her on closed and ongoing Professional Standards Investigation cases.

- **Professional Standards Meetings**

The Director, Personnel Security and Professional Standards and the Manager, Professional Standards Investigations meet with the DG and other senior representatives from the Labour Relations and Compensation Directorate (LRCD) on a bi-weekly basis to brief LRCD regarding ongoing Professional Standards Investigation cases in relation to allegations of misconduct so they can take action, if

required. The intent is to ensure a coordinated approach to the handling of cases of misconduct within the Agency that aligns with the Discipline Policy and Guidelines set forth by the LRCD.

- **Regional Professional Standards Conference Calls**

The Director, Personnel Security and Professional Standards and the Manager, Professional Standards Investigations meet with the regional Executive Directors (or their delegates) on a regular basis to consult and provide status reports on ongoing regional PSI investigations.

- **Internal Labor Relations / Professional Standards Investigations Working Group**

While Security and Labour Relations collaborate and consult with each on a regular basis, a working group is being developed to:

- Create and implement a list of all misconducts types into both PSI and LR case management systems that are aligned with the: CBSA Professional Standards Investigation policy; CBSA Disciplinary Policy and CBSA Business context; and CBSA Code of Conduct.
- Establish a strong partnership between CBSA Labor Relations Division and the Security and Professional Standards Directorate.
- Ensure consistent PSI and LR management practices supporting interoperability and information exchange in an efficient manner.

- **Wrongdoing and Unethical Conduct Monitoring Coordination Committee**

The DSO and the Director, Personnel Security and Professional Standards are called upon to attend committee meetings when there are issues of mutual concern. The Office of Values and Ethics chairs the committee.

National Security and Professional Standards Collaboration and Liaison

- **The DSO Readiness Committee (DSORC)**

The DSO actively participates in the DSORC; whose mandate is to lead the development, implementation, evaluation and improvement of a fully Integrated Federal Security Response System for the Government of Canada that will support the following departmental, governmental and national security objectives:

- Lead the development of security management response and readiness capabilities within the security community;
- Orchestrate the DSO community priorities of action;
- Improve communications within the DSO community;
- Understand and appreciate government-wide vulnerabilities, risks and associated threats; and
- Exert policy influence.

- **Government of Canada Security Council (GCSC)**

The DSO is also an active member of the GCSC. The role of the Government of Canada Security Council (GCSC) involves the following:

- Acting as an advisory body to the Assistant Deputy Minister Security and Identity Committee (ADM SIDC) on security matters³ within the federal departments and agencies, including policy direction and guidance, and on departmental requirements related to the provision of security services;

- Acting as a government-wide forum for the exchange of information and best practices on matters relating to departmental security, security risk management and performance measurement, and results-based management;
- Making recommendations on the delivery of integrated security services to support departmental and government operations, and the effective management of security resources, including the security community of practice;
- Identifying and acting upon opportunities to strengthen the security posture across the federal government by establishing priorities and related initiatives;
- Providing advice to the Treasury Board of Canada Secretariat (TBS) and other Lead Security Agencies on security-related strategic planning, policy development and renewal, and performance measurement; and
- Establishing and overseeing working groups and/or sub-committees to examine security-related issues and priorities.

International Integrity Collaboration and Liaison

The CBSA participates in two international bodies that promote the advancement of professional integrity/professional standards within customs organizations. Both organizations strive to advance integrity within their organizations through: the development of guidance documents and tools; the sharing of best practices and lessons learned; and open discussions about integrity related issues within their own customs organizations.

• The World Customs Organization (WCO) Integrity Sub-Committee (ISC)

In order to remain current with the integrity challenges and advancements among international customs organizations, the CBSA actively participates in the **Integrity Sub-Committee**. The DSO has represented the CBSA at the ISC meetings.

The ISC is a small, well-focused yet high-level group having a balanced representation from all the WCO regions which guides the WCO work in the area of Integrity. The delegates are high-level managers responsible for policy development and strategic direction in their administrations/organizations.

The purpose of the ISC is to:

- Act as a focal point for the design, development, implementation and evaluation of the WCO Integrity Action Plan and Integrity-related tools;
- Advise the Council, through the Policy Commission, on the appropriateness of WCO strategies and priorities necessary to promote the importance of Integrity and ensure the effective implementation of the Revised Arusha Declaration on Integrity in Customs;
- Provide a forum for the exchange of views, experiences and best-practice approaches between Member administrations;
 Ensure effective co-ordination and promotion of Integrity-related activities with the private sector and other international organizations; and
- Ensure effective integration of Integrity principles in all WCO training and technical assistance programs, conventions and other instruments.

• The Border Five (B5) Integrity Working Group

The working group (B5-IWG) consists of members from Canada, England, the United States, Australia and New Zealand customs organizations. The B5-IWG strives to advance areas of potential collaboration relating to integrity across the B5. The intent is to give rise to an agreed-upon 2020 Roadmap that will provide a flexible, multi-year work plan to strategically focus the group's collective efforts to strengthen the effectiveness of managing the border in the years ahead.

The B5-IWG specifically addresses the following areas:

- role and operating environment of customs administrations which give rise to inherent integrity risks;
- corruption and key risks to the integrity of customs administrations;
- building organizational cultures that focus strongly on integrity;
- case studies, lessons learned and leading practices; and
- areas for potential collaboration.

Other **Awareness/Promotion/Communication** materials include:

- Security Bulletins
- Glossary of Security Terminology⁴ -
- Security Handbook
- Information Classification Guide
- Security and Professional Integrity on Atlas
- Security Awareness Week (SAW)
- Departmental Security Officer (DSO) Messages
- Joint Memorandums from the DSO and Labour Relations (See Annex 5)

6. **Monitoring and Oversight**

Monitor through prevention-oriented instruments that monitor integrity lapses.

Management of Allegations of Misconduct and the Departmental Security Officer (DSO)

The Director General, Security and Professional Standards (DG SPSPD)⁵ is responsible for investigating and responding to reports of non-compliance with Government of Canada and CBSA policies, directives and standards and ensuring that appropriate non-disciplinary remedial actions related to Personnel Security Screenings are taken when/as required⁶. Of note is the fact that the administration of Discipline Policy is the responsibility of the Labour Relations and Compensation Directorate (LRCD); the DG SPSPD/DSO has no authority regarding the administration of Discipline.

The Personnel Security and Professional Standards Division (PSPSD) is responsible for conducting and maintaining security screenings for all employees and service providers who will be employed by the CBSA. If the Agency identifies adverse information concerning an applicant to the CBSA, which may raise security concerns, the Agency may deny the granting of their security screening (Reliability) or clearance (Secret/Top Secret). If there is adverse information concerning an existing employee, the Agency will conduct a review into the employee's ability to retain a security screening or clearance.

- **Personnel Security Screening⁷**

The Government of Canada's Policy on Government Security (PGS) requires the CBSA to ensure that all individuals who will have access to government information and assets are security screened at the appropriate level before the commencement of their duties and are treated in a fair and unbiased manner. This directive describes how the CBSA will manage Personnel Security Screening in accordance with the PGS.

⁴ http://atlas/cb-dgc/pol/cm-mc/sv-vs/sv_vs_glos_lex_eng.asp

⁵ At the CBSA, The DG SPSPD is also the DSO.

⁶ Annex 2: Management of Allegations of Misconduct

⁷ Annex 4: Management of Risk in Personnel Security Screening

Security begins by establishing trust in interactions between government and Canadians and within government. Within government, there is a need to ensure that those having access to government information, assets and services are trustworthy, reliable and loyal. The CBSA's Personnel Security Screening Program has been established to support these requirements.

The Personnel Screening Security Program limits access to information and assets to those individuals with a need to know. It ensures that an individual is appropriately screened based on the information and access required for the performance of his or her job.

Using a risk-based approach, effective Personnel Security Screening management enables the CBSA:

- To ensure that individuals with access to government information/assets and/or privileged access to critical systems are reliable and trustworthy;
- To ensure the individual's loyalty to Canada in order to protect itself from foreign intelligence gathering and terrorism; and
- To prevent malicious activity and unauthorized disclosure of protected and classified information or damage affected on critical systems by a disaffected individual in a position of trust.

In recognition of the CBSA's role in law enforcement, national security and public safety and the demonstrated risk exposure to incidents of corruption, fraud and criminal interference, the Agency received Treasury Board approval to implement additional Personnel Security screening tools to augment the baseline screening requirements.

Of note is the Risk Mitigating Measures (RMM) that the Personnel Screening Security Program has implemented to expedite priority files. The RMM involves a telephone interview which allows the applicant an opportunity to disclose any information that may be identified through the formal verification process. The interview is followed by a thorough assessment of the risk posed to the Agency. Should undisclosed adverse information be received through the formal verification process, the applicant will be deemed to have not been honest, trustworthy or that his/her integrity is/has been questionable, the applicant file will be re-opened and result in an investigation.

• **Security and Professional Standards Analysis**

Security and Professional Standards Analysis (SPSA) is a centralized service providing independent preliminary assessment of all disclosed, referred and reported allegations and suspicions of potential employee misconduct or personnel security concerns. By gathering pertinent information and conducting a preliminary assessment, the SPSA determines:

- The seriousness of the case;
- If the disclosure pertains to potential unreliability, disloyalty, lack of integrity or misconduct; and/or
- If a Review for Cause or formal Professional Standards Investigation is warranted.

When a referral of misconduct is more complex and/or when an arms-length investigation is required, the Professional Standards Investigations section will conduct a formal investigation. All other cases will be referred back to Regional Management to perform a fact finding.

To support Regional Management in conducting their fact findings, the SPSA provides all available supporting evidence, as well as, the necessary strategic advice/guidance/direction to conduct initial fact findings at the Regional level and ensures that the results of the fact findings are communicated back to the section for inclusion in the Professional Standards Case Management system. In addition, Fact Finding training is under development with the Training and Development Division and is scheduled to be available prior to the end of this fiscal year. The facilitator/training tools will be available so that the session can be delivered face-to-face and the development of an on-line product is under consideration.

- **Professional Standards Investigations (PSI)**

Employees preserve the CBSA's reputation for integrity, honesty and professionalism by conducting themselves in an ethical manner, as prescribed in the *CBSA Code of Conduct* and the *Values and Ethics Code for the Public Service*. It is the policy of the CBSA that all allegations or evidence of employee misconduct be investigated according to the principles of natural justice to ensure that the professional reputation of staff and the integrity of CBSA operations are protected and that appropriate measures are taken. Three major categories for employee investigations:

- Violations of the Code of Conduct (e.g., criminal association, off duty conduct)
- Violations of CBSA Policy (e.g., unauthorized disclosure of information, arming incidents)
- Violations of Criminal Legislation (e.g., assault, fraud)

CBSA Personnel Security Review Committee

The CBSA Personnel Security Review Committee reviews and assesses information in order to make recommendations to the Departmental Security Officer (DSO) regarding suspensions, revocations and reinstatements of Reliability Status screenings for existing employees; and the issuance of security notification letters where security risks can be managed by the Agency

Employees who want to challenge a decision to deny, suspend or revoke a status may do so through the applicable grievance procedures or file a complaint with the Canadian Human Rights Commission if they believe that the decision was based on one or more prohibited grounds, as listed in the Canadian Human Rights Act.

Individuals from outside the public service, such as applicants and contractors, may complain to the Canadian Human Rights Commission or file an application for judicial review with the Federal Court, according to the specifics of each case.

Security Intelligence Review Committee

The Canadian Security Intelligence Service Act establishes the Security Intelligence Review Committee (SIRC) as the formal review body in cases concerning denial of a security clearance. Pursuant to Section 42 of the *Canadian Security Intelligence Service Act*, this right of review is available to outside candidates, employees and those contracting with the government who are denied a security clearance by a deputy head that results in:

- An individual being denied employment, or being dismissed, demoted or transferred or being denied a promotion by reason only of a denial or a security clearance; or
- An individual being denied a contract to provide goods or services to the Government of Canada by reason only of a denial of a security clearance.

When a deputy head disagrees with a SIRC recommendation to grant or reinstate a security clearance, the Office of the National Security Advisor, Privy Council Office (PCO), must be consulted before a final decision is made. The Chairperson of SIRC must also be informed in writing of the final decision taken by a deputy head in such cases.

7. Evaluation and Reporting

Evaluate and report on professional standards/professional integrity through oversight mechanisms, reporting functions, and survey findings reflect the state of Integrity at the CBSA.

Evaluation

The SPSP Integrity Continuum⁸ is presented as part of the Agency Performance Summary to the CBSA Executive Committee.

Stage 1: Pre-employment Screening

of denied CBSA applicants and the total number of clearances granted each quarter:

- Total number of clearances granted in each quarter.
- Number of applicants submitted to the Security Review Committee and the number that were denied.
- Demographics of applicants that were denied (e.g. # denials for BSO recruits).

Stage 2A: Current Employees (Review for Cause, PSI Investigations)

of founded investigations, and the total number of investigations:

- Total number of investigations currently underway (both the review-for-cause and the PSI investigations).
- Regional trends (e.g. top 3 types of misconduct occurs in Region X and Y; Region Z experiences the highest number of overall misconduct).
- Number of referrals, in addition to the number of cases managed within the regions.
- Demographics of employees investigated (e.g. # investigations were management positions, # were BSOs).

Stage 2B: Primary Screening Results

- Primary Screening Results include: Revocations and Suspensions.
- Provide information on the secondary outcomes of the screening results: security briefings delivered or security notification letters.

Risk Profile and Risk Response Strategies

- **The CBSA Environmental Scan** - The Agency's Environmental Scan seeks to identify the most significant drivers and their implications for the CBSA on an annual basis. Environmental scanning monitors developments in the global, domestic and business environment, in a range of areas including society, technology, economy, the environment and politics. In addition, each section of the E-Scan examines the implications of the trends identified through the perspective of the Agency's dual mandate: facilitation, security, or both.
- **CBSA Enterprise Risk Profile (ERP) and Risk Response Strategies** (Integrated Risk Management) – The ERP is the result of a formalized process that included facilitated risk assessments for enabling branches and Program Management Tables, and an analysis of risk information from consultations, the National Border Risk Assessment, the CBSA Environmental Scan and other information sources. The Professional Conduct and Information Security Risks are reported on through the ERP process.

⁸ See Annex 3 Integrity Continuum

- **CBSA Departmental Security Plan (DSP) and Risk Register** - The SPSP developed and implemented a DSP in January 2013. As part of the ongoing DSP process, the Agency is required to monitor the level of risk exposure and control effectiveness of all security risks, the progress on the mitigation of the unacceptable security risks, capture new or emerging security risks to the Agency and update the initial plan. The data collected during the security risk management process is recorded in a Security Risk Register which provides an inventory of the current (Integrated Risk Management) security risks and serves as a decision-making tool to ensure that the CBSA fulfills its mandate of assuring the protection of employees, information, assets, and the continuity of critical services. The Risk Register is updated annually (at a minimum).

Internal Reports:

- **Functional Management Model**

The FMM was introduced in 2010 as an attempt to enhance national consistency in Security Program delivery and to better position the Security Program to understand, monitor and control the costs and performance of its key security activities. It has been adapted to fit various CBSA programs, including the SPSP since Q4 of 2010/2011

- **Professional Standards Investigations (PSI) Annual Report**

The PSI report provides a summary and analysis of all CBSA employee misconduct received by the PSPSP in fiscal year. It provides senior management with picture of the PSI's achievements, challenges, key observations, statistical (including demographic) data, and the way forward for the PSI program.

- **Management Accountability Framework (MAF) – Security Management**

The Security Management questionnaire is intended to generate management performance information that provides insight into a department's or agency's security management practices for the benefit of the organization and to contribute to improving the overall situational awareness and security posture of the Government of Canada (GC). The three key areas of the methodology focus on:

- Practices to ensure the effectiveness, integration and inclusion of all security activity areas;
- Key security risk mitigation measures that enable the protection of GC assets and continued program and service delivery; and
- Alignment to GC security policy priorities that underpin secure delivery and modernization goals for GC programs and services.

Surveys

- **Public Service Employee Survey (PSES)**

The PSES is led by the Office of the Chief Human Resources Officer (Treasury Board of Canada Secretariat), in collaboration with Statistics Canada. The survey, which has been conducted every three years since 1999, measures employees' opinions in relation to employee engagement, leadership, the workforce and the workplace. Once the PSES results are published, each Directorate management team is responsible for developing and implementing a Management Response Action Plan (MRAP) to address areas of concern.

Audits

- **Internal audits** conducted by the Internal Audit and Program Evaluation Directorate. The Internal Audit function provides independent, objective and evidence-based information, assurance and advice to the President, Audit Committee, and CBSA management. It helps the Agency accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of:
 - risk management strategies and practices;
 - management control frameworks, systems and practices; and
 - governance processes.
- **External Audits** can be performed by the Office of the Auditor General (OAG). An OAG Audit provides an independent, objective and systematic assessment of how well government is managing its activities, responsibilities and resources. Performance audits contribute to a public service that is effective and a government that is accountable to Parliament and Canadians.
- **Audit of Professional Standards (2015) and Management Response Action Plan (MRAP)**
 The audit objective was to examine whether:
 - The management control framework around professional standards is well designed, which includes the investigation practices;
 - Professional standards have been clearly defined, well-communicated, and effectively implemented across the Agency; and
 - Professional standards are monitored.

The MRAP provides the management response to the audit recommendations and the management action plan to address required corrective measures.

Other Government of Canada oversight functions include, the Offices of the:

- **Privacy Commissioner** - The Privacy Commissioner of Canada is an Officer of Parliament who reports directly to the House of Commons and the Senate. The Commissioner is an advocate for the privacy rights of Canadians and his/her powers include:
 - Investigating complaints, conducting audits and pursuing court action under two federal laws;
 - Publicly reporting on the personal information-handling practices of public and private sector organizations;
 - Supporting, undertaking and publishing research into privacy issues; and
 - Promoting public awareness and understanding of privacy issues.
- **Public Sector Integrity Commissioner** - The Office of the Public Sector Integrity Commissioner of Canada is an independent organization created in 2007 to establish a safe and confidential mechanism for public servants or members of the public to disclose wrongdoing in, or relating to, the federal public sector. Specifically, the Office has the mandate to investigate disclosures of alleged wrongdoing and complaints of reprisal brought forward under Public Servants Disclosure Protection Act.

8. **Enforcement**

The intent of the enforcement function is to enforce and correct lapses in CBSA and Government of Canada policy instruments through prevention-oriented instruments that control and respond to integrity lapses.

CBSA Discipline Policy and Guidelines

The Labour Relations Division, Labour Relations and Compensation Directorate, Human Resources Branch is responsible for the administration of the CBSA Discipline Policy and Guidelines which is intended to promote the

expected standard of behaviour by motivating employees to apply workplace values, rules and standards of conduct that are considered desirable or necessary in achieving the goals and objectives of the Agency and the overall Public Service of Canada.

Management of Allegations of Misconduct and the Departmental Security Officer (DSO)

Under the PGS:

- DSO has the authority to deny, suspend or revoke Reliability Status screenings.
- The Deputy Head retains the sole authority to deny, suspend or revoke Secret and Top Secret Clearances.

From a security perspective, any employee found to have violated policies, directives or standards may be subject to security screening review for cause. Local management, in consultation with the Labour Relations and Compensation Directorate (LRCD), may also administer disciplinary action, up to and including termination of employment.

The primary outcomes of a review into the employee's ability to retain a security screening or clearance include: suspension, revocation, or retention of the screening or clearance. Secondary outcomes include: security briefings, security notification letters, or screenings with limitations.

The suspension or revocation of a screening or clearance results in an employee no longer meeting one of the conditions of his/her employment. This places the individual in a state where he/she can no longer be employed by the Agency and, as such, management and Labour Relations must suspend the employee without pay under the provisions of the Public Service Labour Relations Act. Such a decision can be challenged by an individual.

Further to the information provided in the Security Review Committee section, employees who want to challenge a decision to suspend or revoke a status may do so through the applicable grievance procedures or file a complaint with the Canadian Human Rights Commission if they believe that the decision was based on one or more prohibited grounds, as listed in the Canadian Human Rights Act. Individuals from outside the public service (such as applicants and contractors) that have been denied a security clearance, may complain to the Canadian Human Rights Commission or file an application for judicial review with the Federal Court, according to the specifics of each case.

ANNEX 1 – Legislative Framework

The CBSA administers more than 90 acts, regulations and international agreements on behalf of other federal departments and agencies, the provinces and the territories.

Examples of acts administered by the CBSA: *Agriculture and Agri-Food Administrative Monetary Penalties Act; Canada Border Services Agency Act; Citizenship Act; Criminal Code; Customs Act; Customs Tariff; Excise Act; Excise Tax Act; Export and Import Permits Act; Food and Drugs Act; Health of Animals Act; Immigration and Refugee Protection Act; Plant Protection Act; Special Import Measures Act*

Source: 2015-2016 CBSA Reports on Plans and Priorities (RPP)

*Please note that Bill C-51, known as the *Anti-Terrorism Act, 2015*, introduces a new Act of Parliament entitled the *Security of Canada Information Sharing Act (SCISA)*. SCISA, which came into force on August 1, 2015, provides authority for all federal government institutions to disclose security of Canada information to designated Canadian federal government institutions that have national security responsibilities. The Canada Border Services Agency (CBSA) is one of the 17 designated recipient institutions.*

SCISA provides a clear authority for all federal government institutions to disclose information related to the security of Canada to designated Canadian federal government institutions that have national security responsibilities. The Canada Border Service Agency (CBSA) is one of those recipient institutions.

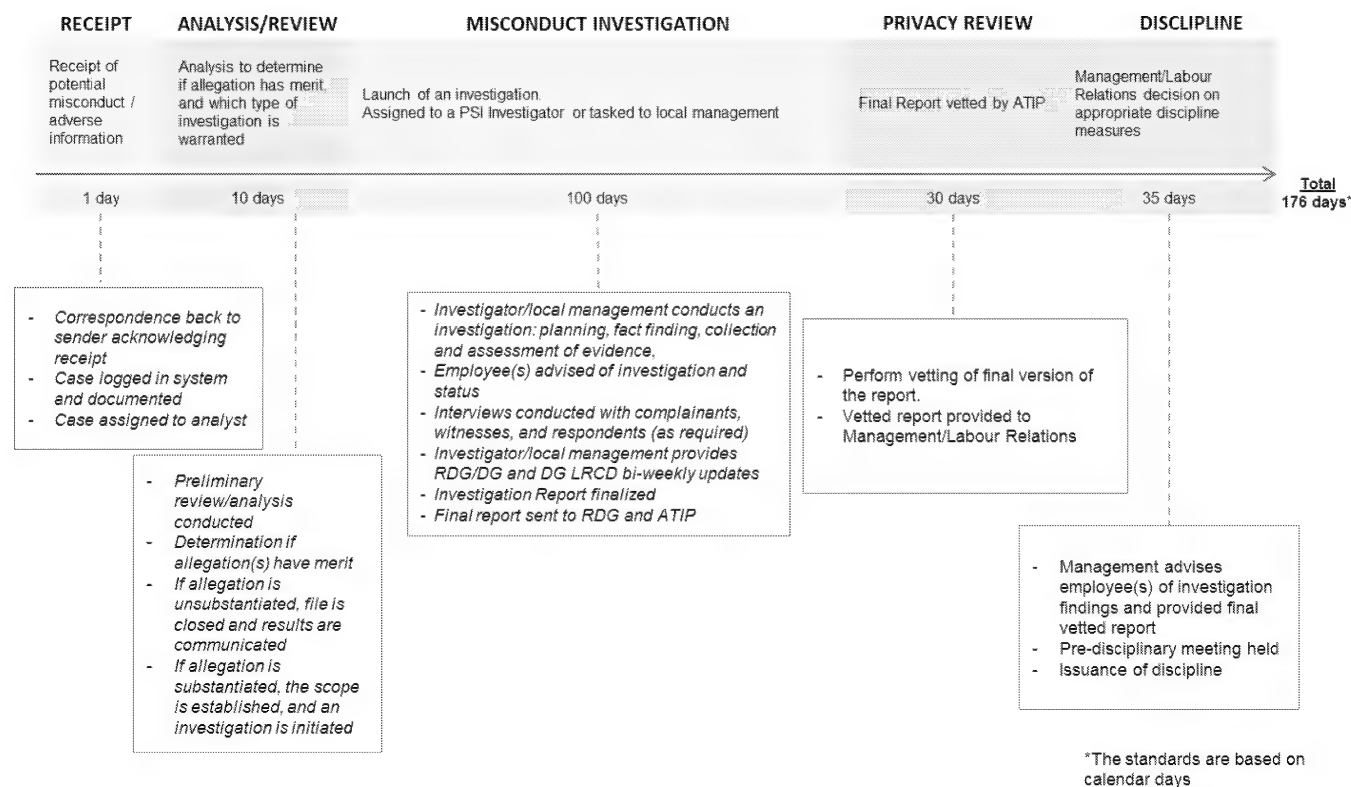
Access to accurate, timely, and reliable information is essential to the Government's ability to protect Canada's national security. As Canada increasingly faces diverse and complex threats requiring coordinated approaches across Government organizations, it is important to ensure that national security agencies continue to have access to the information needed to counter these threats in order to ensure the safety and security of Canadians.

Government of Canada institutions already share information with each other for national security purposes. However, some institutions lack a clear authority to share national security-relevant information and, in some cases, legal barriers prevent or delay the sharing of key information.

To facilitate the effective and timely access to government information for national security purposes and address legal gaps, the Government has created a clear authority for federal Government institutions to share national security-relevant information with other designated federal Canadian Government institutions that have national security responsibilities. Information may be shared proactively or in response to a request, while always respecting *Charter* and privacy rights.

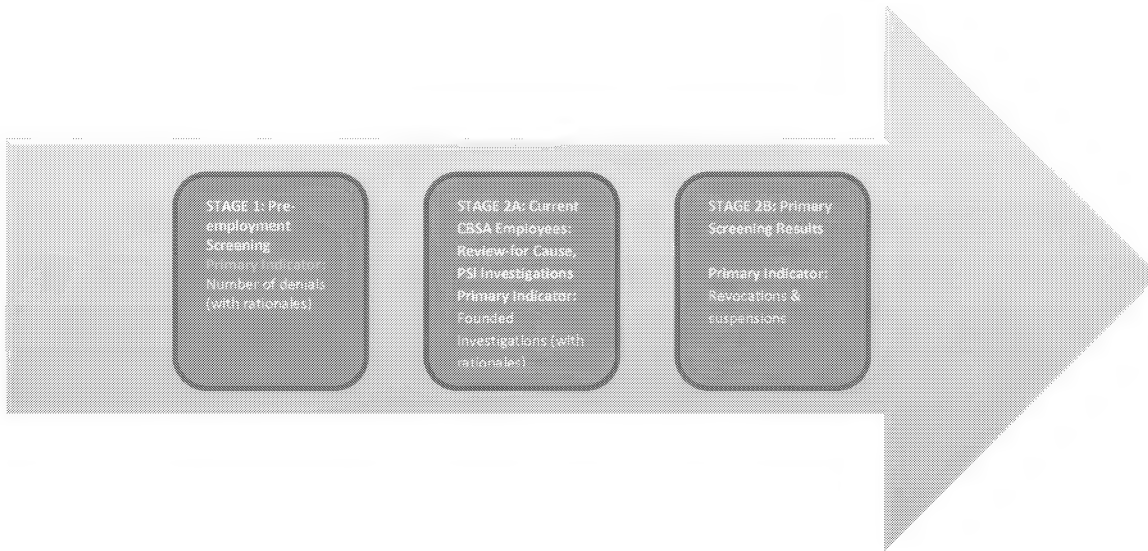
The CBSA has developed the *Directive on Sharing Information Pursuant to the Security of Canada Information Sharing Act* to provide guidance on how to use the new legislative provisions in SCISA.

ANNEX 2 – Management of Allegations of Misconduct



ANNEX 3 – Integrity Continuum

Over the past few years, the SPSP has built a professional integrity program with protective measures ingrained into the continuum of the CBSA employment stages. These measures ensure that strong mechanisms are in place for the CBSA to prevent, detect, recover and respond to personnel-related risks in the workplace. As such, we proposed the following three ‘primary indicators’ for performance reporting of the CBSA’s integrity profile, namely for the Agency Performance Summary (APS) and the Functional Management Model (FMM).



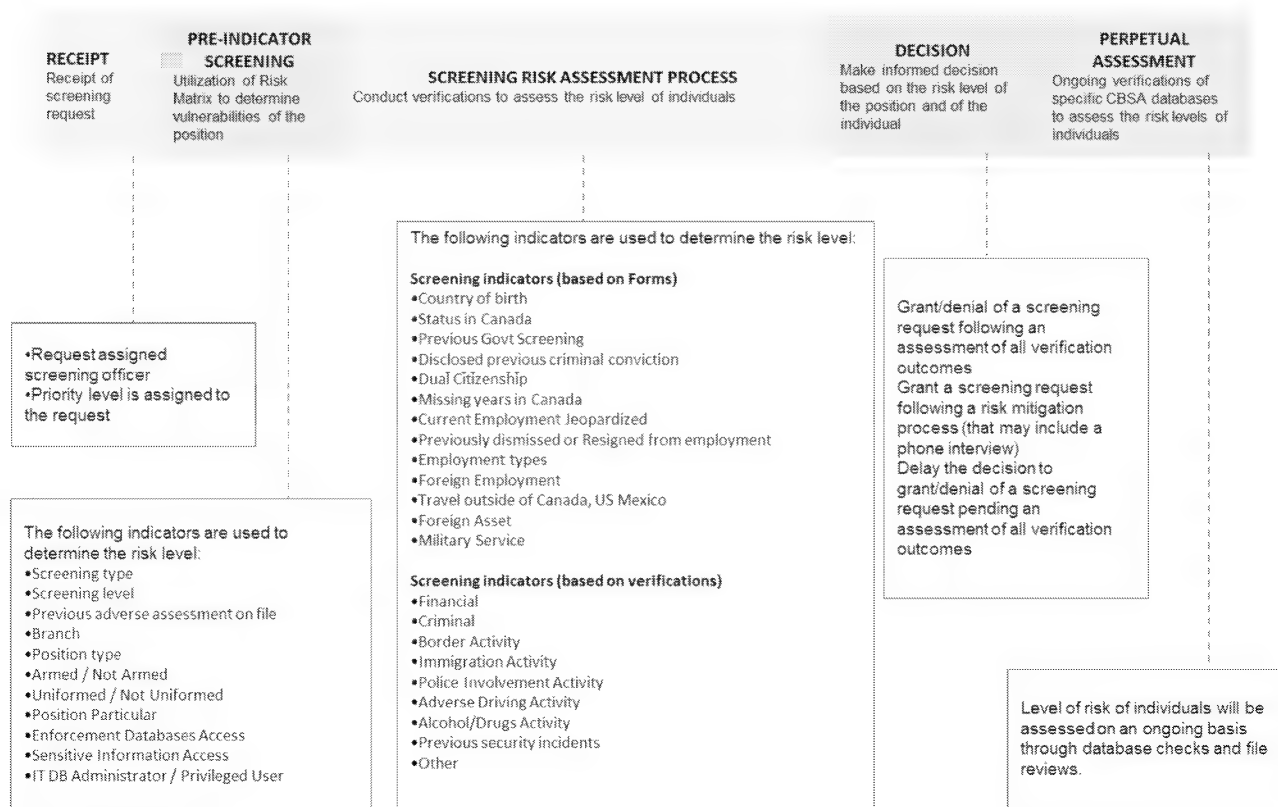
Stage 1 includes the pre-employment integrity measures established to identify and deny high-risk employees seeking employment. It will separate out all the Departmental Security Officer (DSO) decisions to highlight the number of denials over time and the rationales for each (e.g. criminal record, etc).

Stage 2A examines the measures in place to address issues encountered with current employees in violation of CBSA standards of conduct. The primary measure will look at the quantity of **founded** investigations and the types for each (e.g. misconduct, IT breach, etc.) Secondary measure: Stage 2 will also provide the total number of investigations currently

Stage 2B addresses the current CBSA employees who, following an investigation by the Personnel Security Investigations (PSI) section, have their security clearance affected as a result of a founded allegation.

The primary indicator is the employees whose security clearances have been either revoked or suspended.

ANNEX 4 – Management of Risk in Personnel Security Screening



ANNEX 5 – Mandatory Reporting and Investigation of all Allegations or Suspensions of Employee Misconduct Memo

MEMORANDUM TO:

Headquarters Directors General
and Regional Directors General

CC:

Directors, Regional Human Resources

SUBJECT:

Mandatory Reporting and Investigation of all Allegations or Suspensions of Employee Misconduct

Purpose:

To clearly establish the mandatory requirements for management to report all allegations or suspicions of employee misconduct to the Security and Professional Standards Directorate (SPSD).

Background:

The SPSPD is responsible for the Security and Professional Integrity Programs within the CBSA. The SPSPD investigates employee misconduct, violations of the Code of Conduct, CBSA and government policies, and also investigates security incidents.

Investigating allegations or suspicions of employee misconduct is accomplished by:

the SPSPD conducting a preliminary assessment which determines if a Professional Standards Investigation (PSI) is required;

local management conducting a review in consultation with Labour Relations when

NOTE DE SERVICE À L'INTENTION DES :

Directeurs généraux de l'Administration
centrale et Directeurs généraux régionaux

CC :

Directeurs, Ressources humaines régionales

SUJET :

Signalement et enquête obligatoires de toutes allégations ou soupçons d'inconduite d'un employé

Objet :

Établir clairement les exigences obligatoires pour la direction de signaler toutes les allégations et tous les soupçons concernant l'inconduite d'employé à la Direction de la sécurité et des normes professionnelles (DSNP).

Contexte :

La DSNP est responsable des Programmes de sécurité et d'intégrité professionnelle au sein de l'ASFC. La DSNP enquête l'inconduite d'employé, les infractions au Code de conduite, aux politiques de l'ASFC et du gouvernement, et enquête les incidents de sécurité.

L'enquête d'allégations ou des soupçons d'inconduite d'employé est menée par :

la DSNP en effectuant une évaluation préliminaire qui détermine si une enquête sur les normes professionnelles (ENP) est nécessaire;

la direction locale en effectuant un examen en collaboration avec les Relations de travail quand

warranted; or

The SPSPD closing the investigation when there is insufficient information to support the allegations or suspicions.

If the SPSPD determines that the allegation or suspicion of employee misconduct should be addressed at the local level, the local senior management shall conduct a review in conjunction with their local Labour Relations Advisor.

Labour Relations and Compensation Directorate (LRCD) is responsible for:

Providing advice on the employee status during the investigation;

Following up with local Labour Relations once an investigation has been completed; and

Advising on the quantum of the discipline to be imposed.

Reporting Requirements:

In order for the CBSA to ensure fulsome investigations into allegations or suspicions of employee misconduct and to apply consistent disciplinary measures across the country, management must adhere to the following requirements:

The responsible senior manager must refer all incidents and complaints of alleged or suspected CBSA employee misconduct, criminal or otherwise, to the Director General of the SPSPD or to the Director of the Personnel Security and Professional Standards Division (PSPSD) within twenty-four (24) hours of the senior manager becoming aware of the incident or complaint.

Through consultation with the reporting senior

justifié; ou

La DSNP en clôturant l'enquête en raison de renseignements insuffisants pour appuyer les allégations ou les soupçons.

Si la DSNP détermine que l'allégation ou le soupçon d'inconduite d'un employé doit être traité à l'échelle local, le cadre de direction locale doit mener un examen conjoint avec le conseiller local des Relations de travail.

La Direction des relations de travail et de la rémunération (DRTR) est responsable de :

Fournir des conseils sur le statut de l'employé pendant l'enquête;

S'assurer d'un suivi auprès des Relations de travail local lorsqu'une enquête est terminée;

Aviser sur la nature de la mesure disciplinaire à prendre.

Exigences en matière de rapports :

Pour que l'ASFC puisse assurer la tenue d'une enquête approfondie sur les allégations ou les soupçons d'inconduite d'employés et appliquer des mesures disciplinaires uniformément dans l'ensemble du pays, la direction devra respecter les exigences suivantes :

Le cadre supérieur responsable devra signaler tous les incidents et les plaintes concernant les cas d'inconduite présumés ou soupçonnés d'employés de l'ASFC, de nature criminelle ou autre, au Directeur général de la DSNP ou au directeur de la Division de la sécurité du personnel et des normes professionnelles (DSPNP) dans les vingt-quatre (24) heures après que le cadre supérieur aura été informé de l'incident ou de la plainte.

manager, the SPSPD will conduct a preliminary assessment to determine the most appropriate course of action required (i.e. a PSI or a review conducted at the management level). Once a final decision is rendered, senior management will be informed within five (5) business days.

Where disagreement exists regarding the appropriate investigative approach, the Director General of the SPSPD, as the functional program lead, will make the final decision on the course of action to be taken.

Irrespective of the type of investigation, the delegated authority, in conjunction with Labour Relations and the LRCD, is responsible for determining the employee's status during the investigation.

Where a management review is to be conducted, management is responsible for meeting with the employee to advise him/her that the alleged misconduct is being reviewed. In addition, management will provide the employee with a written notice of the review.

Following a management review, local senior management is responsible for submitting to the SPSPD a package describing:

The allegations / suspicions or a copy of the complaints which includes all reports collected or prepared during the review; and

The final determination of the review.

This information is to be forwarded to the PSPSPD within five (5) days of completion for their review.

Once the package is finalized, the local manager must provide a copy to their local Labour Relations **and** LRCD for appropriate action.

En consultation avec le cadre supérieur responsable, la DSPNP effectuera une évaluation préliminaire afin de déterminer le plan d'action le plus approprié (c.-à-d. une ENP ou un examen à l'échelle de la direction). Lorsqu'une décision est rendue, le cadre supérieur est informé dans les cinq (5) jours ouvrables suivants.

En cas de désaccord concernant la démarche d'enquête appropriée, le directeur général de la DSPNP, à titre de responsable du programme fonctionnel, devra prendre la décision définitive sur la marche à suivre.

Indépendamment du type d'enquête, l'autorité compétente, en liaison avec les Relations de travail et la DRTR, doit déterminer le statut de l'employé pendant l'enquête.

Lorsqu'un examen par la direction doit être réalisé, la direction doit rencontrer l'employé et l'informer qu'on examine l'inconduite présumée. De plus, la direction doit aviser par écrit l'employé de l'examen.

Suite d'un examen par la direction, le cadre supérieur local doit envoyer à la DSPNP une trousse décrivant :

Les allégations / les soupçons ou une copie des plaintes comprenant tous les rapports recueillis ou préparés pendant l'examen; et

La décision rendue à la suite de l'examen.

Cette information devra être envoyée à la DSPNP dans les cinq (5) jours suivant l'achèvement de l'examen.

Une fois la trousse finalisée, le gestionnaire local doit fournir une copie aux Relations de travail locales **et** à la DRTR afin de prendre les mesures qui s'imposent.

As a law enforcement agency, these mandatory requirements are essential to maintaining the CBSA's integrity.

For any questions regarding these matters, do not hesitate to contact Kenneth McCarthy, Director, PSPSD at 613-941-7244 or Noel Eichel, Director, LRCD at 613-948-9856.

We thank you for your cooperation.

Original Signed By / Original signé par

Pierre Giguère

Director General / Directeur général

Security and Professional Standards Directorate /
Direction de la sécurité et des normes
professionnelles

Departmental Security Officer /

Agent de sécurité du ministère

En sa qualité d'organisme d'application de la loi, ces exigences obligatoires sont essentielles au maintien de l'intégrité de l'ASFC.

Pour toute question relative à ces enjeux, n'hésitez pas de communiquer avec Kenneth McCarthy, directeur de la DSPNP, au 613-941-7244 ou avec Noel Eichel, directrice de la DRTR, au 613-948-9856.

Nous vous remercions de votre collaboration.

Marc Thibodeau

Director General / Directeur général

Labour Relations and Compensation Directorate /
Direction des relations de travail et de la
rémunération



Canada Border
Services Agency

Agence des services
frontaliers du Canada



Discipline Guidelines

March 1, 2007



PROTECTION • SERVICE • INTEGRITY

Canada

Off-duty Conduct

Off-duty conduct is usually a private matter; however, it could become a work related matter in the following circumstances:

- it harms the Agency's reputation or program;
- it renders the employee unable to perform a requirement of his or her duties;
- it leads other employees to refuse, be reluctant or be unable to work with that employee;
- it renders the employee guilty of a serious breach of the Criminal Code and thus renders his or her conduct injurious to the general reputation of the Agency and its employees. For example, the nature of the criminal charges may be incompatible with the functions of a peace officer; or
- it makes it difficult for the Agency to manage its operations efficiently and/or to direct its workforce.

*Criteria found in Millhaven Fibres Ltd., Millhaven Works, and Oil, Chemical and Atomic Workers Int'l Union, Local 9-670 (1967), 1 (A) Union-Management Arbitration Cases 328. These criteria were subsequently adopted by the Federal Public Sector Labour Relations and Employment Board in several decisions.

Employees must report to their manager as soon as possible if they are arrested, detained or charged with a violation in Canada or outside Canada of laws, regulations, a federal statute or the Criminal Code related to their official duties. Employees must report a traffic violation or highway code ticket received during the use of a government-owned or leased vehicle.

Steps in Determining Misconduct and Disciplinary Measure

- a) Meet with the employee to advise him or her of the alleged misconduct, that an investigation will be conducted and of the possibility of discipline.
- b) Conduct a fair and objective investigation.

c) Treat the employee in accordance with the principles of natural justice (refer to Investigations and Interviews below).

d) Determine whether or not misconduct has occurred.

Determine the appropriate disciplinary measure by taking into account the mitigating and/or aggravating circumstances.

Investigations and Interviews

General principles governing the investigation process:

- Rights of employees must be fully recognized and respected.
- Information must be factual, direct and free of ambiguity.
- Misconduct must be established before imposing disciplinary action.

Steps governing investigations and interviews:

a. An investigation into the alleged wrongdoing should be conducted as soon as possible after the alleged relevant incident.

b. The investigation should be conducted fairly and objectively. It should also consider and provide the following:

- background information leading to the relevant incident;
- input from the witness(es);
- the employee's response to the allegation(s); and
- analysis of the facts.

c. As part of the investigation and in the context of natural justice, the employee has a right to be confronted with the alleged wrongdoing and to have an opportunity to respond. Interviews with the employee will take place in private. Documentation of the outcome of the interview, including the investigation report that has been vetted in accordance with the *Privacy Act*, must be retained and must be made available to the employee upon request.

d. An employee may be accompanied by a bargaining agent representative or other individual, as per the relevant collective agreement, to meetings convened by management concerning a situation related to discipline. The right of representation for matters related to discipline also applies to excluded and unrepresented employees.

Flexibility and Application of Discipline

Rigid equation of offences and disciplinary measures should be avoided. Disciplinary action of a progressively more serious nature is warranted for repeated incidents of misconduct or for a single act of serious misconduct.

Determining Appropriate Disciplinary Measure

Each incident of alleged misconduct must be considered on a case-by-case basis. Based on the circumstances, in the manager's opinion, what corrective measures would be necessary to correct the unacceptable behaviour? The application of disciplinary measures should not be punitive in nature but rather corrective. In the event that previous efforts to correct behaviour have not achieved the desired results, or if the misconduct of the employee is deemed so serious that continued employment is not considered feasible, termination of employment may be the only meaningful appropriate measure. See the [Disciplinary Measures Framework and FAQ](#) for additional guidance.

Mitigating circumstances, and the unique circumstances of each situation, may require variations in the manager's response to seemingly similar offences. Consultation with the labour relations advisors will ensure that a review of applicable jurisprudence is conducted.

The following are examples of mitigating factors to be considered when determining the severity of the disciplinary measure:

- a good employment record;
- the number of years of service;
- the isolated nature of the incident;
- the existence of provocation;
- the lack of premeditation;
- condonation;
- the inconsistent application of rules;
- the failure of the employer to clearly communicate an instruction to an employee;
- the relative seriousness of the offence in relation to the organizational policies, mandate and obligations;
- the rehabilitative potential of the employee;
- remorse for the misconduct;
- behaviour outside the employee's control, such as unacceptable behaviour caused by a medical condition; and
- the organizational culture.

The severity of a disciplinary measure may be increased due to the following aggravating factors:

- repeated misconduct;
- multiple types of misconduct;
- encouragement of others to commit misconduct;
- the employee does not recognize the seriousness of the behaviour;
- the unacceptable behaviour was committed by a person in a position of authority;
- the seriousness of the incident in relation to organizational policies, mandate and obligations;
- the actions are harmful to the employer's reputation (e.g. personal violations of the laws administered by the CBSA);
- the misconduct renders the employee unable to perform assigned duties;
- the misconduct is in violation of the *Criminal Code* and is injurious to the general reputation of the CBSA and its employees;
- the misconduct makes it difficult for the employer to manage its operations efficiently and to direct its workforce; and
- the misconduct endangers the health and safety of employees.

Disciplinary action should be administered as soon as possible after the incident of misconduct. A lengthy time period between the breach of discipline and management's response tends to disassociate the offence from the corrective action. Such a delay may also be considered as condonation and may weaken management's case.

Meeting at Which a Disciplinary Decision is Rendered

Once a decision on a disciplinary measure is made, the employee shall be informed as soon as practicable of this decision at a disciplinary meeting. The delegated authority should advise the employee that he or she may have a bargaining agent or other representative accompany him or her to the meeting. The employee should be informed of the following during the disciplinary meeting:

- the disciplinary measure to be imposed;
- the reason(s) the disciplinary measure was chosen;
- factors that were taken into consideration in reaching this decision;
- in cases involving suspension, financial penalty, demotion and termination, the manner and time frame in which the disciplinary measure will be implemented;
- the right to present a grievance.

The employee should also be provided with a written copy of the disciplinary action.

In certain cases, collective agreements may require management to inform local union representatives when taking specific types of disciplinary action.

Assignment of an Employee to Less Sensitive Duties or Indefinite Suspension

When a manager has cause to suspect an employee of misconduct, the manager will make every effort to allow the employee to remain in his or her position pending the completion of the investigation of the alleged misconduct. However, when allegations of serious misconduct involve an employee occupying a position that requires a high degree of trust and integrity, the manager will consider if the employee should be removed from his/her duties until the investigation is completed and a decision is rendered.

Allegations of serious misconduct generally relate to, but are not limited to, offences such as theft, smuggling, embezzlement, fraud and violation(s) of the legislation enforced by the CBSA. Removing an employee from his or her duties is done to protect the interests of the Agency, to avoid any appearance of condoning the employee's alleged behaviour and to demonstrate the seriousness of the alleged misconduct. In these circumstances, after consultation with Labour Relations (both regional and corporate), the manager must implement, without undue delay, one of the following two options:

- an assignment to less sensitive duties; or
- an indefinite suspension without pay.

Assigning the employee less sensitive duties is normally the preferred option, provided the following conditions apply:

- such duties are available in the employee's office or headquarters area (as defined in the National Joint Council *Travel Directive*);
- it is operationally feasible;
- the employee meets the reliability/security requirements of the position;
- the nature of the alleged misconduct enables the manager to assign the employee without creating any perception of condoning the alleged misconduct; and
- the alleged misconduct is not of such an extremely serious nature that assigning the employee to less sensitive duties could potentially jeopardize a possible future action to terminate employment.

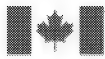
The manager will consult with a labour relations advisor before making the decision to assign an employee to less sensitive duties. If the assignment is deemed inappropriate, the employee will be placed on indefinite suspension without pay until the investigation is completed.

Indefinite Suspension Criteria

An indefinite suspension is used to protect the interests and integrity of the Agency where there is sufficient reason to believe that the presence of the employee in the workplace may jeopardize the employer's interests or property. The burden of proof is on management to show that there is just cause for suspending an employee without pay pending the outcome of an investigation. Consideration must be given to the "Indefinite Suspension Criteria" also known as the *Larson criteria* (PSSRB file 2002 PSSRB 9) listed below and consultation with a labour relations advisor must take place before the indefinite suspension is imposed.

- The issue in a grievance of this nature is not whether the grievor is guilty or innocent, but rather whether the presence of the grievor as an employee of the organization can be considered to present a reasonably serious and immediate risk to the legitimate concerns of the employer.
- The onus is on the employer to satisfy the Federal Public Sector Labour Relations and Employment Board of the existence of such a risk and the simple fact that a criminal charge has been laid is not sufficient to comply with that onus. The organization must also establish that the nature of the charge is such as to be potentially harmful, detrimental or adverse in effect to the employer's reputation or product or that it will render the employee unable to properly perform his or her duties or that it will have a harmful effect on other employees of the company or its customers or will harm the general reputation of the employer.
- The employer must show that it did, in fact, investigate the criminal charge to the best of its abilities in a genuine attempt to assess the risk of continued employment. The burden, in this area, on the employer is significantly less in the case where the police have investigated the matter and have acquired the evidence to lay the charge than in the situation where the employer has initiated proceedings.
- There is further onus on the employer to show that it has taken reasonable steps to ascertain whether the risk of continued employment might be mitigated through such techniques as closer supervision or transfer to another position.
- There is a continued onus on the part of the employer during the period of suspension to consider objectively the possibility of reinstatement within a reasonable period of time following suspension in light of new facts or circumstances that may come to the attention of the company during the course of the suspension. These matters, again, must be evaluated in the light of the existence of a reasonable risk to the legitimate interest of the employer.

Last Modified: 2019-03-08



Canada Border
Services Agency

Agence des services
frontaliers du Canada



Discipline Policy

March 1, 2007



PROTECTION • SERVICE • INTEGRITY

Canada

Statement of Policy

Employees preserve the Canada Border Services Agency's (CBSA) reputation for integrity, honesty and professionalism by conducting themselves in an ethical manner, as prescribed in the *CBSA Code of Conduct* and the *Values and Ethics Code for the Public Sector*. It is the policy of the CBSA that all allegations or evidence of employee misconduct be investigated according to the principles of natural justice to ensure that the professional reputation of staff and the integrity of CBSA operations are protected and that appropriate measures are taken.

Objectives

The objective of this policy is to promote the expected standard of behaviour by motivating employees to apply workplace values, rules and standards of conduct that are considered desirable or necessary in achieving the goals and objectives of the Agency and the overall Public Service of Canada. Discipline is meant to be corrective, not punitive; to encourage ethical behaviour and good conduct; to highlight that misconduct is unacceptable; to correct any unacceptable behaviour; and, in very serious cases, to provide for demotion and termination of employment.

Effective Date

This policy is effective immediately upon issuance.

Definitions

Administrative investigation: a process initiated by management or on its behalf as soon as possible after an alleged act of misconduct has been identified. It is meant to establish factual and documented evidence to assist management in making an informed decision. The investigation will gather information to determine the nature of the alleged wrongdoing, its cause, who is responsible, any witness(es) and the circumstances that might mitigate or aggravate the misconduct.

Aggravating circumstances: circumstances that may increase the severity of the disciplinary measure to be imposed.

Culminating incident: when an employee repeatedly fails to comply with established standards of behaviour. It is an act of misconduct that, in isolation, does not warrant a severe disciplinary measure but, when considered in light of the employee's past record of misconduct, calls for the application of a more severe disciplinary measure up to and including termination of employment. The culminating incident must be proved and must be sufficient to warrant discipline before the employee's past record is considered.

Disciplinary measure: a carefully considered action such as an oral or written reprimand, suspension from work without pay, financial penalty, demotion or termination of employment. The application of a disciplinary measure should not be punitive in nature but rather corrective. The following disciplinary measures are listed in order of increasing severity:

Oral reprimand: an oral disciplinary measure that outlines the nature of the misconduct, the corrective action required and the possible consequences should the behaviour not be corrected. No record of this action is to be placed on the employee's personnel file; however, management should make a note of the oral reprimand.

Written reprimand: a formal written disciplinary measure advising that misconduct has occurred. It should outline its nature, the corrective action required and the possible consequences should the behaviour not be corrected. Should more severe disciplinary action later become necessary, the record of the reprimand(s) on the employee's personnel file will be used to demonstrate that the employee was made aware of the consequences of further misconduct.

Suspension: the employee's temporary removal, without pay, from the place of work as a consequence of misconduct. The notice of suspension should include the nature of the misconduct, the duration of the suspension, the corrective action required and the possible consequences should the behaviour not be corrected.

Note that an administrative suspension may be imposed pending investigation of certain suspected misconduct when the presence of the employee at work cannot be tolerated or could undermine or impede the investigation. See the indefinite suspension criteria in the Guidelines, as established by *Larson v. Treasury Board (Solicitor General of Canada – Correctional Service)* 2002 PSSRB 9.

Financial penalty: an alternative to a suspension where a financial penalty is considered preferable for operational or economic reasons. Financial penalties are appropriate in situations involving mass unlawful withdrawal of services, continuous shift operations and isolated posts where it may be difficult to schedule suspensions without the use of replacements and overtime. They may also be used to impose a definitive disciplinary measure for a specific act of misconduct. The notification to the employee should outline the nature of the misconduct, the corrective action required and the possible consequences should the behaviour not be corrected.

Demotion: an action taken by the delegated manager to appoint an employee to a position at a lower maximum rate of pay. Demotion is an alternative to a disciplinary termination and should be used when the manager is of the opinion that, despite the misconduct, the employee is still suitable for continued employment, though in a position at a lower maximum rate of pay. For example, this disciplinary measure could be used when a manager is found guilty of harassment and is moved to a position with no managerial responsibilities.

Termination of employment: the involuntary separation of an employee from the Public Service for misconduct. This measure may be used after a series of acts of misconduct when a “culminating incident” has occurred or for a single act of serious misconduct. Termination is the most severe disciplinary measure and the decision to proceed should be taken only after careful consideration and when it is determined that the employee is no longer suitable for continued employment because of the act of misconduct.

Misconduct: a willful action or inaction on the part of an employee that includes a breach of the *Criminal Code*, the *CBSA Code of Conduct* and/or the *Values and Ethics Code for the Public Sector*. It could also be related to attendance and inappropriate personal behaviour at work or away from work.

Mitigating circumstances: circumstances that may lessen the severity of the possible disciplinary measure to be imposed. They might include but are not limited to the employee's length of service, the employee's past record, the seriousness of the offence and the unique circumstances of each situation.

Natural justice: the requirement for management to be fair and reasonable in its application of discipline. It includes the following principles: the right to be informed of any allegations/accusations made and to be given sufficient information to understand the allegations; the right to be heard and the opportunity to present one's case so that an adequate defense can be put forward; and the right to have the decision based on relevant and reliable evidence, obtained through a proper investigation that was disclosed to both parties.

Roles and Responsibilities

Employees

At all times, employees are responsible for conforming to established standards of conduct, implicit or explicit, throughout the CBSA. They must also adhere to and respect the *CBSA Code of Conduct* and the *Values and Ethics Code for the Public Sector*.

Employees may be accompanied by a bargaining agent or other individual, as per the relevant collective agreement, to attend a meeting convened by the delegated authority. For matters related to discipline, excluded and unrepresented employees also have the right to be accompanied by the individual of their choice.

An employee who is subject to a disciplinary measure is entitled to present a grievance at each level of the grievance procedure up to and including the final level. Grievances concerning the termination or demotion of an employee shall be presented directly to the final level. If the grievance relates to a suspension, financial penalty, demotion or termination, the employee may refer the grievance to the Federal Public Sector Labour Relations and Employment Board for a third-party review.

Managers

Managers are responsible and accountable for the administration of discipline within the CBSA. They are to ensure that employees are aware of the expected standard of conduct, to exemplify the expected standard of conduct and to impose disciplinary action based on the *CBSA Delegation of Human Resource Authorities for Grievances, Discipline and Other Matters*. Managers must respect the principles of natural justice and abide by the provisions pertaining to discipline contained in collective agreements. Managers are expected to consult their regional labour relations advisor as soon as possible when misconduct is suspected. Consultation with the regional labour relations advisor is mandatory when management is considering the following options: assignment of an employee to less sensitive duties, placement of the employee on indefinite suspension, financial penalty, demotion or termination.

Regional Labour Relations Advisors

Regional labour relations advisors play a vital role in providing advice and assistance to the delegated authority and should be consulted at the earliest opportunity when potential misconduct has been identified. They provide advice at the initial stages, assist managers in the analysis of the investigation report, determine circumstances that mitigate or aggravate the misconduct and provide insight into current jurisprudence and precedents. Regional labour relations advisors must consult with Corporate Labour Relations when management is considering the following options: assignment of an employee to less sensitive duties, placement of an employee on indefinite suspension, financial penalty, demotion or termination.

Corporate Labour Relations Advisors

Corporate labour relations advisors play an important role in providing advice and guidance to regional labour relations advisors and managers to ensure that there is consistent application of discipline across the Agency and that it conforms to the central agency position. Corporate labour relations advisors must consult with the Treasury Board Secretariat on all potential demotions and terminations of employment.

Documentation

A written record of the disciplinary action taken, except when it is an oral reprimand, is to be placed on the employee's personnel file. With respect to discipline, only documentation that the employee is aware of can be placed on the personnel file. If the employee refuses to acknowledge the disciplinary documentation being placed on file, a notation to that effect may be used as a substitute. Removal of any document or written statement related to a disciplinary measure placed on the employee's personnel file shall be destroyed in accordance with the applicable provision of the collective agreement. Documents that have been removed

from the employee's personnel file cannot be considered in any subsequent application of disciplinary measures.

Discipline file: The discipline file is held by Human Resources and is used to maintain information considered when rendering the disciplinary measure (i.e. to determine the need for and nature of the disciplinary measure taken). Delegated managers should ensure that the discipline file contains all of the evidence/documentation gathered during the investigation, a copy of the investigation report that has been vetted in accordance with the *Privacy Act*, the reason for the decision, an outline of the action taken and a copy of any written communication to the employee, including the disciplinary letter.

Employee personnel file: A copy of the disciplinary letter will be placed on the employee's personnel file. Collective agreements normally provide for removal of disciplinary notices from the employee's file after a prescribed period provided that no further disciplinary measures have been recorded during that period.

Monitoring

The Labour Relations and Compensation Directorate will assess the application of the *CBSA Discipline Policy* through the monitoring of investigation reports and disciplinary measures, on-site assessments or discipline file review. A copy of the disciplinary letter will be forwarded to the Directorate at the time it is issued.

References

Acts:

Financial Administration Act

Privacy Act

Federal Public Sector Labour Relations Act

Canada Border Services Agency:

Code of Conduct

Delegation of Human Resource Authorities for Grievances, Discipline and Other Matters

Policy on the Use of Electronic Resources

Disciplinary Measures Framework

Treasury Board:

Collective Agreements

Guidelines for Discipline

Policy on Harassment Prevention and Resolution

Policy on Terms and Conditions of Employment

Values and Ethics Code for the Public Sector

Inquiries

Labour Relations and Compensation Directorate, Human Resources Branch

Last Modified: 2019-03-08